

# ***SPECIAL EDUCATION ADVISORY PANEL***

**#12**

## ***FORMAL RECOMMENDATION***

***AND***

## ***FOLLOW-UP PROCEDURE***

The Advisory Panel makes the following formal recommendation to DESE in the area of Special Education.

### **RECOMMENDATION (02/17/06)**

It is the belief of the SEAP that all families should be afforded the benefit of lowest level resolution that enables families and schools to reach consensus without engaging in legal representation when seeking to resolve a dispute in the provision of an Individual Education Program and related services, placement, or evaluation. In support of that belief, the SEAP recommends that DESE take all measures necessary to preserve the resolution conference set forth in state statutes 162.950 and 162.961, regulations, and policies.

### **DESE INITIAL RESPONSE (4/06)**

First, DESE does not agree that the current resolution conference is the “lowest level resolution that enables families to reach consensus without engaging in legal representation when seeking to resolve a dispute....” In fact, mediation is the lowest level resolution available and is free of charge and is free of lawyers. Under the new federal requirements and state law, mediation is available outside of the due process hearing system.

Second, it is clear to DESE that the resolution conference process that has been law in Missouri for two decades, will in practice still exist in the form of the new “resolution session” identified in federal law. For example, compare the characteristics:

Resolution conference:

- Informal/No record
- Both parties can bring participants
- Lawyers can be present
- Takes place prior to a due process hearing

Resolution session:

- Informal/No record
- Both parties can bring participants
- NO lawyers can be present unless the parent brings a lawyer.
- Takes place prior to a due process hearing

The only real difference between the two processes, besides the right of a school district to have its lawyer present regardless of parent representation in the current Missouri resolution conference, is that the new resolution session is triggered by the filing of a due process hearing

request, while the Missouri resolution conference is triggered by a resolution conference request. But despite the different trigger, a due process hearing will not be held until the resolution session process is complete.

With the new federal requirement for a resolution session, the current Missouri requirement for a resolution session is redundant. The parties have ample opportunity for informal resolution of the dispute prior to a due process hearing being held, through use of the mediation process available exclusive of the due process hearing system, the use of the mediation process offered after a due process hearing request is filed, and the use of the resolution session process after a due process hearing request is filed.

DESE is confident that the new federal provisions and state law provisions for a resolution session will accomplish what the resolution conference in Missouri law has in the past, and that the pending legislation to eliminate the resolution conference will remove the redundancy created when IDEA was amended to require a resolution session.

#### **UPDATES/ACTIONS (4/06)**

The panel asked DESE to reconsider their position.

#### **UPDATE/ACTIONS (6/06)**

DESE is reviewing for possible discussion at a future meeting.

#### **UPDATE/ACTIONS (8/06)**

DESE has no legal authority to add to the state regulations if it is not in state statute.

#### **FINAL RESOLUTION (date)**